

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JACKIE ELLEN SEAUNIER,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY.

Defendant.

NO: 1:16-CV-3137-TOR

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

BEFORE THE COURT are the parties' cross-motions for summary judgment.

ECF Nos. 14, 16. This matter was submitted for consideration without oral argument. The Court has reviewed the administrative record, the parties' completed briefing, and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

11

STANDARD OF REVIEW

A district court’s review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). “Substantial evidence” means relevant evidence that “a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record “is susceptible to more than one rational interpretation, [the court] must uphold the ALJ’s findings if they are supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an ALJ’s decision on account of an error that is harmless.” *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted). The party appealing the

1 ALJ's decision generally bears the burden of establishing that it was harmed.

2 *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

3 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

4 A claimant must satisfy two conditions to be considered “disabled” within the
5 meaning of the Social Security Act. First, the claimant must be “unable to engage in
6 any substantial gainful activity by reason of any medically determinable physical or
7 mental impairment which can be expected to result in death or which has lasted or
8 can be expected to last for a continuous period of not less than twelve months.” 42
9 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be “of such
10 severity that he is not only unable to do his previous work[,] but cannot, considering
11 his age, education, and work experience, engage in any other kind of substantial
12 gainful work which exists in the national economy.” *Id.* § 1382c(a)(3)(B).

13 The Commissioner has established a five-step sequential analysis to determine
14 whether a claimant satisfies the above criteria. *See* 20 C.F.R. § 416.920(a)(4)(i)-(v).

15 At step one, the Commissioner considers the claimant’s work activity. *Id.* §
16 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
17 Commissioner must find that the claimant is not disabled. *Id.* § 416.920(b).

18 If the claimant is not engaged in substantial gainful activities, the analysis
19 proceeds to step two. At this step, the Commissioner considers the severity of the
20 claimant’s impairment. *Id.* § 416.920(a)(4)(ii). If the claimant suffers from “any

1 impairment or combination of impairments which significantly limits [his or her]
2 physical or mental ability to do basic work activities,” the analysis proceeds to step
3 three. *Id.* § 416.920(c). If the claimant’s impairment does not satisfy this severity
4 threshold, however, the Commissioner must find that the claimant is not disabled. *Id.*

5 At step three, the Commissioner compares the claimant’s impairment to
6 several impairments recognized by the Commissioner to be so severe as to preclude a
7 person from engaging in substantial gainful activity. *Id.* § 416.920(a)(4)(iii). If the
8 impairment is as severe as or more severe than one of the enumerated impairments
9 the Commissioner must find the claimant disabled and award benefits. *Id.* §
10 416.920(d).

11 If the severity of the claimant’s impairment does meet or exceed the severity of
12 the enumerated impairments, the Commissioner must pause to assess the claimant’s
13 “residual functional capacity.” Residual functional capacity (“RFC”), defined
14 generally as the claimant’s ability to perform physical and mental work activities on a
15 sustained basis despite his or her limitations, *id.* § 416.945(a)(1), is relevant to both
16 the fourth and fifth steps of the analysis.

17 At step four, the Commissioner considers whether, in view of the claimant’s
18 RFC, the claimant is capable of performing work that he or she has performed in the
19 past (“past relevant work”). *Id.* § 416.920(a)(4)(iv). If the claimant is capable of
20 performing past relevant work, the Commissioner must find that the claimant is not

1 disabled. *Id.* § 416.920(f). If the claimant is incapable of performing such work, the
2 analysis proceeds to step five.

3 At step five, the Commissioner considers whether, in view of the claimant’s
4 RFC, the claimant is capable of performing other work in the national economy. *Id.*
5 § 416.920(a)(4)(v). In making this determination, the Commissioner must also
6 consider vocational factors such as the claimant’s age, education and work
7 experience. *Id.* If the claimant is capable of adjusting to other work, the
8 Commissioner must find that the claimant is not disabled. *Id.* § 416.920(g)(1). If the
9 claimant is not capable of adjusting to other work, the analysis concludes with a
10 finding that the claimant is disabled and is therefore entitled to benefits. *Id.*

11 The burden of proof is on claimant at steps one through four above. *Bray v.*
12 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009). If the analysis
13 proceeds to step five, the burden shifts to the Commissioner to establish that (1) the
14 claimant is capable of performing other work; and (2) such work “exists in significant
15 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700
16 F.3d 386, 389 (9th Cir. 2012).

17 **ALJ FINDINGS**

18 On June 12, 2012, Plaintiff filed a Title XVI application for supplemental
19 security income, alleging a disability onset date of May 1, 2009. Tr. 18. Plaintiff’s
20 claim was denied initially on October 16, 2012, Tr. 26, and upon reconsideration on

1 January 3, 2013, Tr. 111. *See id.* Plaintiff requested a hearing before an ALJ, which
2 was held on June 20, 2014. Tr. 33-76.

3 On February 5, 2015, the ALJ rendered a decision denying Plaintiff's claim.
4 Tr. 18-32. At step one, the ALJ found that Plaintiff had not engaged in substantial
5 gainful activity since June 12, 2012, the application date. Tr. 20. At step two, the
6 ALJ found that Plaintiff had the following severe impairments: osteoarthritis and
7 allied disorder (left knee degenerative joint disease) and substance addiction
8 disorders (methamphetamine abuse in reported remission and cannabis abuse). *Id.* At
9 step three, the ALJ found that Plaintiff does not have an impairment or combination
10 of impairments that meets or medically equals a listed impairment. Tr. 23. The ALJ
11 then concluded that Plaintiff had the RFC

12 to perform light work as defined in 20 CFR 416.967(b) except she can
13 lift and or carry 20 pounds occasionally and 10 pounds frequently; she
14 can stand and or walk with normal breaks; for a total of about 4 hours
15 in an 8-hour workday; she can sit with normal breaks for a total of
16 about 6 hours in an 8-hour workday; she is limited to frequent left
17 upper extremity reaching; she is limited to frequent climbing ramps
18 and stairs, balancing, stooping, kneeling, crouching, and crawling; she
19 is capable of unskilled, simple routine work; and she can have
20 occasional contact with the public for work task but the average
occurrence being 10 minutes or less.

21 *Id.* At step four, the ALJ found that transferability of job skills is not an issue
22 because Plaintiff has no past relevant work. Tr. 25. However, the ALJ proceeded to
23 step five and found that, considering Plaintiff's age, education, work experience, and

1 RFC, there are jobs in significant numbers in the national economy that Plaintiff
2 could perform. Tr. 26. On that basis, the ALJ concluded that Plaintiff was not
3 disabled as defined in the Social Security Act. *Id.*

4 On May 10, 2016, the Appeals Council denied Plaintiff's request for review,
5 Tr. 1-3, making the ALJ's decision the Commissioner's final decision for purposes of
6 judicial review. *See* 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

7 ISSUES

8 Plaintiff seeks judicial review of the Commissioner's final decision denying
9 her supplemental security income under Title XVI of the Social Security Act.

10 Plaintiff raises three issues for the Court's review:

- 11 (1) whether the ALJ erred in finding Plaintiff not credible;
12 (2) whether the ALJ erred in weighing the medical evidence; and
13 (3) whether the ALJ erred at step two in rejecting various impairments
as non-severe.

15 ECF No. 14 at 4. The Court evaluates each issue in turn.

16 DISCUSSION

17 A. Adverse Credibility Finding

18 Plaintiff faults the ALJ for improperly rejecting her subjective complaints.
19 ECF No. 14 at 16-20. Plaintiff argues that the Commissioner relies on the wrong
20 "substantial evidence" standard, instead of the required "specific, clear and

1 convincing reasons” standard. Regardless, as explained below, the ALJ’s reasons
2 meet the higher “clear and convincing” standard.

3 An ALJ engages in a two-step analysis to determine whether a claimant’s
4 testimony regarding subjective pain or symptoms is credible. “First, the ALJ must
5 determine whether there is objective medical evidence of an underlying impairment
6 which could reasonably be expected to produce the pain or other symptoms alleged.”
7 *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). “The claimant is not
8 required to show that her impairment could reasonably be expected to cause the
9 severity of the symptom she has alleged; she need only show that it could reasonably
10 have caused some degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591
11 (9th Cir. 2009) (internal quotation marks omitted).

12 Second, “[i]f the claimant meets the first test and there is no evidence of
13 malingering, the ALJ can only reject the claimant’s testimony about the severity of
14 the symptoms if she gives ‘specific, clear and convincing reasons’ for the rejection.”
15 *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter v.*
16 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)). “General findings are insufficient;
17 rather, the ALJ must identify what testimony is not credible and what evidence
18 undermines the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821,
19 834 (9th Cir. 1995); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he
20 ALJ must make a credibility determination with findings sufficiently specific to

1 permit the court to conclude that the ALJ did not arbitrarily discredit claimant's
2 testimony."). In making an adverse credibility determination, the ALJ may consider,
3 *inter alia*, (1) the claimant's reputation for truthfulness; (2) inconsistencies in the
4 claimant's testimony or between his testimony and his conduct; (3) the claimant's
5 daily living activities; (4) the claimant's work record; and (5) testimony from
6 physicians or third parties concerning the nature, severity, and effect of the claimant's
7 condition. *Thomas*, 278 F.3d at 958-59.

8 Here, the ALJ found that Plaintiff reported difficult lifting, bending, standing,
9 and sitting. Tr. 20 (citing Tr. 274-280). Plaintiff also reported that walking was the
10 only thing she could do without affecting her back until she sat down or stopped.
11 *Id.* In September 2002, Plaintiff endorsed left shoulder and low chronic back pain,
12 reporting a 20-month pain and increased symptoms with activity. *Id.* Plaintiff also
13 complained of neck and knee pain, and testified that she has migraine headaches two
14 times a week and difficulty with memory, concentration, understanding, and
15 following instructions. *Id.*

16 The ALJ provided numerous specific, clear, and convincing reasons for finding
17 Plaintiff not credible. First, the ALJ reasoned that her statements concerning the
18 intensity, persistence, and limiting effects of her symptoms "exceed objective
19 findings." Tr. 24. The ALJ found there are minimal, if any, back, shoulder, neck,
20 and knee-related complaints in the record, and no ongoing reports. *Id.* The ALJ also

1 reasoned that x-rays were normal and physical exams consistently show full strength
2 in Plaintiff's shoulder and a normal range of motion and gait. *Id.* Physical
3 examinations in September 2012, similarly showed that Plaintiff was "within normal
4 limit range of motion of cervical region, hip joints, knee joints, ankle joints, shoulder
5 joints, elbow joints, finger/joints." Tr. 24 (citing Tr. 392-398). In July 2013,
6 Plaintiff exhibited "full active range of all extremities" and "had a steady normal
7 pace and gait," which is also inconsistent with Plaintiff's reporting. Tr. 24 (citing
8 Tr. 510). During an examination in February 2013, the ALJ found that Plaintiff "had
9 5/5 grip strength bilaterally . . . [and] 5/5 strength movement of her right shoulder" as
10 well as a "normal neurological exam." Tr. 24 (citing Tr. 549-553). In April 2014,
11 Plaintiff "had grossly normal exam findings of the extremities with no appreciated
12 pain with palpation" as well as "a normal steady gait with normal pace." Tr. 24
13 (citing Tr. 638). Finally, the ALJ also noted that in June 2014, Plaintiff "was in no
14 acute distress," "had intact neurovascular findings and full normal range of motion of
15 her extremities" and "5/5 strength in all extremities" with a "normal gait." Tr. 24
16 (citing Tr. 634). Notwithstanding these contradictions, the ALJ considered Plaintiff's
17 left shoulder and low back pain and accommodated both in the RFC. Tr. 21.

18 Second, as to Plaintiff's claimed mental impairments, while the failure to seek
19 mental health treatment may not be a legitimate basis to reject a claimant's symptom
20 claims, *see Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996), the lack of

1 credible evidence in the record corroborating the extent of mental health limitations
2 can be, *see Molina*, 674 F.3d at 1113-14. The ALJ opined that Plaintiff's ongoing
3 drug use undermines her credibility with respect to her claimed mental health
4 symptoms and the record shows that her self-reporting is inconsistent. Tr. 25.

5 To that end, the ALJ explained that in August 2012, Plaintiff admitted using
6 methamphetamine whenever it was available until 6 or 7 months prior and marijuana.
7 *Id.* However, on September 30, 2012, Plaintiff denied any illicit drug use. *Id.* (citing
8 Tr. 395). On October 17, 2012, Plaintiff yielded a positive drug test for cannabinoids
9 and methamphetamine. *Id.* (citing Tr. 404). In March 2013, Plaintiff stated that she
10 last used methamphetamine in February 2013, but had a positive drugs test for
11 cannabinoids, methamphetamine, and opiates months later in July 2013. *Id.* (citing
12 Tr. 437, 487-488).

13 Here, the record shows that Plaintiff's statements certainly reflect her struggle
14 with substance abuse. However, Plaintiff's last report in April 2014, that she used
15 methamphetamine in the past 30 days and *every other day before that*, and marijuana
16 once in the past 30 days and *daily before that*, starkly contradicts her reports in
17 August 2012, September 2012, and March 2013, that she was not using. Tr. 616.

18 An ALJ may properly consider evidence of a claimant's substance use in
19 assessing credibility, and inconsistent testimony concerning drug use can contribute
20 to an adverse credibility finding. *Thomas*, 278 F.3d at 959 (the ALJ's finding that

1 claimant was not a reliable historian regarding drug and alcohol usage supports
2 negative credibility determination); *Verduzco v. Apfel*, 188 F.3d 1087, 1090 (9th Cir.
3 1999) (conflicting or inconsistent testimony concerning alcohol or drug use can
4 contribute to an adverse credibility finding). Although Plaintiff did not challenge this
5 basis for the ALJ’s adverse credibility determination, the Court also finds it relevant
6 that the ALJ did not err in relying on Plaintiff’s drug use in discounting her
7 credibility.

8 Third, the ALJ found that Plaintiff’s reported daily living activities
9 demonstrated greater functioning than she claimed. Tr. 24. The ALJ found that
10 Plaintiff could perform chores until her pain became too much and last did chores the
11 evening before the hearing. *Id.* The ALJ also found it relevant that Plaintiff
12 “rearranged the living room, wall hangings, and moved the bed” because she has bed
13 bugs and was trying to clean. *Id.* The ALJ referred to an August 2012 Adult
14 Function Report where Plaintiff claimed that she could prepare meals and perform
15 chores, shopped in stores, cared for her pet puppy, and panhandled. Tr. 24 (citing Tr.
16 271-280). In September 2012, she reported that she could take care of her daily
17 personal needs, grocery shop, wash dishes, and perform chores. Tr. 24 (citing Tr.
18 394). In April 2013, Plaintiff reported throwing a ball backwards. Tr. 24 (citing Tr.
19 703). In February 2014, Plaintiff reported playing racquetball. Tr. 24 (citing Tr.
20 550).

1 “While a claimant need not vegetate in a dark room in order to be eligible for
2 benefits, the ALJ may discredit a claimant’s testimony when the claimant reports
3 participation in everyday activities indicating capacities that are transferable to a
4 work setting” or when activities “contradict claims of a totally debilitating
5 impairment.” *Molina*, 674 F.3d at 1112-13 (internal quotation marks and citations
6 omitted) (emphasis added). Contrary to Plaintiff’s argument, the ALJ was not
7 required to find that Plaintiff’s daily activities are transferrable to a work setting,
8 merely that her claims of a debilitating impairment are contradicted by her daily
9 activities, which is what the ALJ found here. *See id.* Plaintiff’s argument that the
10 ALJ made only vague references to her daily living activities is belied by the ALJ’s
11 report. The ALJ stated that the “intensity, persistence and limited effect” of
12 Plaintiff’s symptoms are not “entirely credible” for various reasons identified at Tr.
13 24, *including* her daily living activities. Tr. 23-24. Plaintiff argues that the ALJ
14 made no clear connection between her activities and contradictions with her other
15 testimony, but the ALJ was not required to provide that level of specificity. The ALJ
16 discredited Plaintiff’s testimony about her impairments because her subjective
17 complaints conflict with her daily activities. *See Molina*, 674 F.3d at 1113; *Valentine*
18 *v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 693 (9th Cir. 2009). As long as an ALJ’s
19 interpretation of a claimant’s daily activities is “rational,” the Court “must uphold the
20 ALJ’s decision where the evidence is susceptible to more than one rational

1 interpretation.” *Burch v. Barnhart*, 400 F.3d 676, 680–81 (9th Cir. 2005) (citing
2 *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989)). The Court does so here.

3 Finally, Plaintiff halfheartedly argues that the ALJ erred by inferring a lack of
4 severity of symptoms, and suggests that the ALJ faulted Plaintiff for not seeking
5 regular medical treatment or missing appointments. ECF No. 14 at 18. The record
6 does not support Plaintiff’s recitation of the ALJ’s findings. Rather, the ALJ
7 evaluated Plaintiff’s examination findings and concluded that her complaints exceed
8 objective findings. *See Tr. 24.*

9 In sum, the Court determines that the ALJ provided numerous specific, clear,
10 and convincing reasons for rejecting Plaintiff’s testimony and, therefore, did not err.
11 *See Ghanim*, 763 F.3d at 1163.

12 **B. Medical Opinion Evidence**

13 Plaintiff faults the ALJ for discounting examining psychologist, Tae-Im Moon,
14 Ph.D.’s opinion in favor of state agency reviewing psychological consultant, Leslie
15 Postovoit, Ph.D. ECF No. 14 at 10 (citing Tr. 25). Plaintiff also contends that the
16 ALJ improperly assigned partial weight to examining physician William Drenguis,
17 M.D.’s opinion. ECF No. 14 at 10 (citing Tr. 24-25). Plaintiff vaguely argues that
18 the ALJ accorded too much weight to state agency reviewing providers. *Id.*

19 There are three types of physicians: “(1) those who treat the claimant (treating
20 physicians); (2) those who examine but do not treat the claimant (examining

1 physicians); and (3) those who neither examine nor treat the claimant but who review
2 the claimant's file (nonexamining or reviewing physicians)." *Holohan v. Massanari*,
3 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted). "Generally, a treating
4 physician's opinion carries more weight than an examining physician's, and an
5 examining physician's opinion carries more weight than a reviewing physician's." *Id.*
6 "In addition, the regulations give more weight to opinions that are explained than to
7 those that are not, and to the opinions of specialists concerning matters relating to
8 their specialty over that of nonspecialists." *Id.* (citations omitted).

9 Factors relevant to evaluating any medical opinion "include the amount of
10 relevant evidence that supports the opinion and the quality of the explanation
11 provided; the consistency of the medical opinion with the record as a whole; the
12 specialty of the physician providing the opinion; and other factors, such as the degree
13 of understanding a physician has of the Administrations' 'disability programs and
14 their evidentiary requirements' and the degree of his or her familiarity with other
15 information in the case record." *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007).

16 If a treating or examining physician's opinion is uncontradicted, an ALJ may
17 reject it only by offering "clear and convincing reasons that are supported by
18 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
19 "However, the ALJ need not accept the opinion of any physician, including a treating
20 physician, if that opinion is brief, conclusory, and inadequately supported by clinical

1 findings.” *Bray*, 554 F.3d at 1228 (internal quotation marks and brackets omitted).
2 “If a treating or examining doctor’s opinion is contradicted by another doctor’s
3 opinion, an ALJ may only reject it by providing specific and legitimate reasons that
4 are supported by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81
5 F.3d at 830-31).

6 “Where an ALJ does not explicitly reject a medical opinion or set forth
7 specific, legitimate reasons for crediting one medical opinion over another, he errs.”
8 *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). “In other words, an ALJ errs
9 when he rejects a medical opinion or assigns it little weight while doing nothing more
10 than ignoring it, asserting without explanation that another medical opinion is more
11 persuasive, or criticizing it with boilerplate language that fails to offer a substantive
12 basis for his conclusion.” *Id.* at 1012-13. That said, the ALJ is not required to recite
13 any magic words to properly reject a medical opinion. *Magallanes*, 881 F.2d at 755
14 (holding that the Court may draw reasonable inferences when appropriate). “An ALJ
15 can satisfy the ‘substantial evidence’ requirement by setting out a detailed and
16 thorough summary of the facts and conflicting clinical evidence, stating his
17 interpretation thereof, and making findings.” *Garrison*, 759 F.3d at 1012 (quoting
18 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)). “The ALJ must do more than
19 offer his conclusions. He must set forth his own interpretations and explain why they,
20 rather than the doctors’, are correct.” *Id.*

1 **1. Tae-Im Moon, Ph.D., examining psychologist**

2 Plaintiff contends that the ALJ erred in elevating State agency psychological
3 consultant Dr. Postovoit's opinion above the opinion of examining psychologist Tae-
4 Im Moon, Ph.D.'s opinion. Tae-Im Moon, Ph.D. examined Plaintiff during a DSHS
5 mental health evaluation in August 2012. Tr. 21; 102. Dr. Moon opined that
6 Plaintiff was moderate to markedly limited in cognitive and social factors including
7 her ability to complete a normal workday and workweek without interruptions from
8 psychologically-based symptoms. *See* Tr. 25 (citing Tr. 381-385; 386-391). The
9 ALJ accorded Dr. Moon's opinion "little weight" because Dr. Moon reviewed no
10 records and, instead, "*relied solely on [Plaintiff's] self-reports, which the record*
11 *shows are unreliable at times.*" *Id.* (emphasis added). The ALJ further reasoned that
12 Plaintiff was "still abusing drugs at the time of [Dr. Moon's] assessment, which
13 undercuts the reliability of his opinion." *Id.*

14 Plaintiff argues that the ALJ's finding that Dr. Moon relied solely on Plaintiff's
15 subjective self-reports is unsupported. ECF No. 14 at 11. Rather, Plaintiff contends
16 that her performance on a mental status examination constituted objective evidence
17 sufficient to establish functional limitations and severe depression and ADHD
18 impairments. *Id.* at 12. Plaintiff also disagrees with the ALJ's finding that Dr.
19 Moon's results were mostly normal. Second, Plaintiff argues that the ALJ did not
20

1 explicitly explain how her drug use undercuts the reliability of Dr. Moon's opinion.

2 *Id.* at 13.

3 Here, the ALJ did not err in discounting the opinion of examining physician
4 Dr. Moon because the ALJ gave "specific, legitimate reasons for doing so that are
5 based on substantial evidence in the record." *Morgan v. Comm'r of Soc. Sec. Admin.*,
6 169 F.3d 595, 600 (9th Cir.1999) (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1041
7 (9th Cir. 1995)). Specifically, Dr. Moon's opinions were primarily based on check-
8 the-box forms, predicated on Plaintiff's self-reporting, who the ALJ determined was
9 not credible. See *Molina*, 674 F.3d at 1111 ("[T]he ALJ may 'permissibly reject[] ...
10 check-off reports that [do] not contain any explanation of the bases of their
11 conclusions.' " (internal citation omitted)); *Morgan*, 169 F.3d at 602 ("A physician's
12 opinion of disability premised to a large extent upon the claimant's own accounts of
13 his symptoms and limitations may be disregarded where those complaints have been
14 properly discounted." (internal quotation marks omitted)).

15 Next, Plaintiff argues that the ALJ should have explained how her drug use
16 undercuts the reliability of Dr. Moon's opinion, but the ALJ explained that Plaintiff's
17 ongoing use and inconsistent testimony undermines her credibility. Because Dr.
18 Moon's opinion is premised, at least to a large extent, on Plaintiff's claimed mental
19 health symptoms and because Plaintiff testified that she was on drugs at that time, *see*
20 Tr. 616, the ALJ did not err in discounting the reliability of Dr. Moon's opinion.

1 The Court finds that the ALJ's reasons for discounting Dr. Moon's opinion
2 were specific, legitimate, and supported by substantial evidence. The ALJ provided
3 legally sufficient reasons for limiting Dr. Moon's opinion and, thus, did not err. *See*
4 *Bray*, 554 F.3d at 1228.

2. William Drenguis, M.D., examining physician

Plaintiff argues that the ALJ improperly discounted Dr. Drenguis' opinion as "not completely consistent with objective findings," but adopted many of these same limitations in the RFC. ECF No. 14 at 14 (citing Tr. 23, 25). Plaintiff also argues that because Dr. Drenguis' opinion, limiting Plaintiff to only occasional reaching and only four hours of sitting, conflicts with the RFC determination, it must be rejected explicitly, which the ALJ allegedly failed to do. *Id.* at 14-15. Plaintiff contends that if "the RFC assessment conflicts with an opinion from a medical source, the adjudicator must explain why the opinion was not adopted." ECF No. 17 at 7 (citing SSR 96-8p).

15 Here, the ALJ discounted the opinion because he reasoned that Dr. Drenguis'
16 findings, which include reaching and sitting limitations, are not completely consistent
17 with objective findings. Tr. 25. The ALJ also stated that images of the lumbar spine
18 and shoulder showed no abnormality and Plaintiff had mostly normal range of motion
19 in her upper and lower extremities, 5/5 strength in all major muscle groups
20 bilaterally, and a normal gait. Tr. 25. Contrary to Plaintiff's argument, the ALJ's

1 finding does not conflict with SSR 96-8p. That is, the ALJ sufficiently explained
2 why Dr. Drenguis' "opinion was not adopted." *See* SSR 96-8p; Tr. 24-25. He is not
3 required to recite magic words. *See Magallanes*, 881 F.2d at 755. The ALJ set forth
4 a detailed and thorough summary of the facts and clinical evidence conflicting with
5 Dr. Drenguis' opinion, stated his interpretation thereof, and made findings. *See*
6 *Garrison*, 759 F.3d at 1012. Therefore, the Court also finds that the ALJ provided
7 legally sufficient reasons for limiting Dr. Drenguis' opinion.

8 **C. Step Two Analysis**

9 Plaintiff next argues that the ALJ erred in finding that her only psychological
10 impairment was her substance addiction disorder. Tr. 20-22. Plaintiff argues that
11 the ALJ erred because he failed to consider specific diagnoses from Tae-Im Moon,
12 Ph.D., relying instead on Dr. Postovoit's statements and, therefore, failed to evaluate
13 her mental health for the entire five step process. ECF No. 14 at 5-7. Plaintiff also
14 disagrees with the ALJ's finding that her headaches are stable and resolve with
15 medication and, again, argues that the ALJ failed to incorporate Dr. Drenguis' sitting
16 restrictions in the RFC.

17 The step two inquiry is merely a *de minimis* screening device intended to
18 dispose of groundless claims. *Edlund v. Massanari*, 253 F.3d 1152, 1158 (9th Cir.
19 2001). It does not result in a finding of disability if a particular impairment is found
20 to be "severe" within the meaning of the Commissioner's regulations. *See Hoopai v.*

1 *Astrue*, 499 F.3d 1071, 1076 (9th Cir. 2007). An impairment, to be considered
2 severe, must significantly limit an individual’s ability to perform basic work
3 activities. 20 C.F.R. § 416.920(c); SSR 96–3P, 1996 WL 374181; *see Smolen v.*
4 *Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). Basic work activities include “abilities
5 and aptitudes necessary to do most jobs, including, for example, walking, standing,
6 sitting, lifting, pushing, pulling, reaching, carrying or handling.” 20 C.F.R. §
7 416.921(b). An impairment must be established by medical evidence consisting of
8 signs, symptoms, and laboratory findings, and “under no circumstances may the
9 existence of an impairment be established on the basis of symptoms alone.” *Ukolov*
10 *v. Barnhart*, 420 F.3d 1002, 1005 (9th Cir. 2005) (citing SSR 96–4p, 1996 WL
11 374187 (July 2, 1996)) (defining “symptoms” as an “individual’s own perception or
12 description of the impact of” the impairment). A plaintiff bears the burden of
13 proving that his or her medically determinable impairment or its symptoms affect his
14 or her ability to perform basic work activities. *Edlund*, 253 F.3d at 1159–60.

15 Here, Plaintiff argues that the ALJ failed to consider Dr. Moon’s ADHD and
16 Depressive Disorder diagnoses, and failure to do so renders the ALJ’s step two
17 finding erroneous. ECF No. 14 at 5-6. The Commissioner argues that any error at
18 step two is harmless because the ALJ resolved that step in Plaintiff’s favor. ECF No.
19 16 at 17; *see also* Tr. 22 (incorporating Plaintiff’s “concentration complaints” and
20 “fully accomodat[ing] them in the [RFC]”).

1 Although the ALJ made no explicit finding as to whether Plaintiff's alleged
2 ADHD and Depressive Disorder did or did not constitute a severe impairment, any
3 error is harmless. To start, Plaintiff prevailed at step 2 because the ALJ found that
4 Plaintiff had severe impairments, allowing Plaintiff to proceed to step 3. Trs. 20-22;
5 *see Burch*, 400 F.3d at 682 (concluding any error ALJ committed at step two was
6 harmless because the step was resolved in the plaintiff's favor). The ALJ expressly
7 discussed the opinions of Drs. Moon and Postovoit, both of whom recognized that
8 both impairments were self-reported by Plaintiff and, as explained above, the ALJ
9 provided legally sufficient reasons for discounting Dr. Moon's opinions and
10 Plaintiff's credibility. Nevertheless, the ALJ explained that he "considered all
11 symptoms and the extent to which the[] symptoms can reasonably be accepted as
12 consistent with the objective medical evidence and other evidence." *See also* Tr. 21-
13 22.

14 In limiting Dr. Moon's opinion, the ALJ reasoned that Dr. Moon did not
15 review any records and relied on Plaintiff's assertion that she was diagnosed with
16 ADHD and had symptoms of depression, while also opining that Plaintiff may not be
17 a reliable historian. Tr. 21, 381-382. The ALJ gave little weight to Dr. Moon's
18 opinion because it occurred at a time when Plaintiff was using drugs and is largely
19 based on Plaintiff's self-reports, which the ALJ found not credible because of
20 Plaintiff's prior drug use, contradictions with objective evidence, and inconsistent

1 testimony. Tr. 22. The ALJ gave “significant weight” to Dr. Postovoit’s opinion that
2 Plaintiff’s “history suggests [she] likely had problems with mood and anxiety as
3 related to her substance use more than to separate/additional mental health diagnosis”
4 thereby adopting Dr. Postovoit’s opinion that Plaintiff has a substance addiction
5 disorder.¹ Tr. 22; 25. By agreeing with Dr. Postovoit’s opinion and crediting little
6 weight to Dr. Moon’s, the ALJ explicitly found that Plaintiff “has no established
7 medically determinable mental health impairment separate from substance addiction
8 disorders” at step two. *Id.*

9 Plaintiff argues that the ALJ prematurely concluded that Plaintiff’s problems
10 with mood and anxiety related more to her drug use than to separate or additional
11 mental health diagnoses. ECF No. 17 at 2 (citing *Bustamante v. Massanari*, 262 F.3d
12 949, 955 (9th Cir. 2001)). Plaintiff relies on case law holding that an ALJ cannot use
13 alcohol abuse to deny disability benefits unless the ALJ first finds the claimant
14 disabled. See *Bustamante*, 262 F.3d at 955. However, any error is also harmless
15 because of the legally sufficient reasons the ALJ provided for discrediting Dr.

16

17 ¹ Plaintiff’s argument that the ALJ misinterpreted Dr. Postovoit’s statement is
18 unavailing because the ALJ is tasked with resolving any ambiguity. See *Lingenfelter*,
19 504 F.3d at 1045 (stating that “it is exclusively within the province of the ALJ to
20 interpret ambiguous evidence”).

1 Moon's opinion. In other words, there was no need for the ALJ to proceed to step
2 five on either diagnosis because, unlike in *Bustamante*, regardless of the impact of
3 Plaintiff's drug use, the ALJ's conclusion that Plaintiff did not suffer from severe
4 mental impairments *is* supported by substantial evidence. *Cf. Bustamante*, 262 F.3d
5 at 955; *see also McLeod v. Astrue*, 640 F.3d 881, 886–88 (9th Cir. 2011) (holding
6 that the burden is on the party attacking the agency's determination to show that
7 prejudice resulted from the error).

8 Therefore, the Court determines that any omission of ADHD and Depressive
9 Disorder was harmless as the ALJ sufficiently provided a rationale for rejecting this
10 evidence. *Cf. Black v. Astrue*, No. 11-35379, 472 Fed. App'x 491, 492-93 (9th Cir.
11 2012) (finding that substantial evidence does not support the ALJ's conclusion that
12 an anxiety disorder is not a severe impairment in the absence of any mention of the
13 disorder because “we do not know whether the ALJ's omission was ‘inconsequential
14 to the ultimate nondisability determination’”) (quoting *Stout v. Comm'r Soc. Sec.
15 Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006)). Given that the ALJ expressly
16 recognized Plaintiff's allegations of depression and ADHD, *see* Tr. 21-22, but
17 accorded significant weight to Dr. Postovoit's opinion, and because Plaintiff
18 ultimately prevailed at step 2, the Court finds any failure on the ALJ's part to
19 explicitly discredit either diagnosis harmless. *See id.*

1 Plaintiff next argues that the ALJ improperly found that her headaches are
2 stable and resolve with medication. Plaintiff argues that her headaches were not
3 stabilized because even with treatment, it may take several hours to resolve.
4 Plaintiff's argument requires the Court to improperly put the burden at step two on
5 the Commissioner to show that her headache impairment is not significant. However,
6 the regulations and case law squarely place the burden at step two on the claimant to
7 make a *prima facie* showing that her impairments more than minimally affect her
8 work abilities and have persisted or will continue to persist for a year. 20 C.F.R. §§
9 404.1520(a)(4)(ii), 404.1520(c), 404.1509; *Lockwood v. Comm'r Soc. Sec. Admin.*,
10 616 F.3d 1068, 1071 (9th Cir. 2010). The ALJ concluded that Plaintiff failed to meet
11 this burden regarding the severity of her claimed limitations attributed to her
12 headaches and, as such, did not err. Tr. 21.

13 Finally, Plaintiff relies on 20 C.F.R. § 416.921 for the proposition that it was
14 also error to find Plaintiff's chronic lumbar sprain and chronic left shoulder tendonitis
15 non-severe because they significantly limit her ability to do basic work activities.
16 ECF No. 14 at 9. Based on that reasoning, Plaintiff also rehashes her argument that
17 the ALJ failed to consider Dr. Drenguis' four-hour sitting restriction in the RFC. *Id.*
18 For the reasons articulated above, the Court finds Plaintiff's argument unavailing.
19 The ALJ detailed the facts and evidence conflicting with Dr. Drenguis' opinion and
20 made legally sufficient reasons for limiting Dr. Drenguis' opinion. *See Bray*, 554

1 F.3d at 1228. Moreover, in making the RFC finding, the ALJ “considered all
2 symptoms and the extent to which these symptoms can reasonably be accepted as
3 consistent with the objective medical evidence and other evidence” Tr. 23.

4 The Court finds that the ALJ relied on substantial evidence to support his
5 finding at step two in concluding that she was not disabled.

6 **ACCORDINGLY, IT IS ORDERED:**

- 7 1. Plaintiff’s Motion for Summary Judgment (ECF No. 14) is **DENIED**.
8 2. Defendant’s Motion for Summary Judgment (ECF No. 16) is **GRANTED**.

9 The District Court Executive is directed to file this Order, enter Judgment
10 accordingly, provide copies to counsel, and **CLOSE** the file.

11 **DATED** August 25, 2017.



12 A handwritten signature in blue ink that reads "Thomas O. Rice".
13 THOMAS O. RICE
14 Chief United States District Judge